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14 CFR - CHAPTER I - PART 121

Appendix J to Part 121 -- Alcohol Misuse Prevention Program

This appendix contains the standards and components that must be included in an alcohol misuse prevention program required by this chapter.

I. General.

A. Purpose. The purpose of this appendix is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform safety-sensitive functions in aviation.

B. Alcohol testing procedures. Each employer shall ensure that all alcohol testing conducted pursuant to this appendix complies with the procedures set forth in 49 CFR part 40. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to employers by this appendix.

C. Employer Responsibility. As an employer, you are responsible for all actions of your officials, representatives, and service agents in carrying out the requirements of the DOT agency regulations.

D. Definitions.

As used in this appendix --

Accident means an occurrence associated with the operation of an aircraft which takes place between the time any person boards the aircraft with the intention of flight and the time all such persons have disembarked, and in which any person suffers death or serious injury or in which the aircraft receives substantial damage.

Administrator means the Administrator of the Federal Aviation Administration or his or her designated representative.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this appendix.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Contractor company means a company that has employees who perform safety-sensitive functions by contract for an employer.

Covered employee means a person who performs, either directly or by contract, a safety-sensitive function listed in section II of this appendix for an employer (as defined below). For purposes of pre-employment testing only, the term "covered employee" includes a person applying to perform a safety-sensitive function.

DOT agency means an agency (or "operating administration") of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 65, 121, and 135; 49 CFR parts 199, 219, and 382) in accordance with 49 CFR part 40.

Employer means a part 121 certificate holder; a part 135 certificate holder; an air traffic control facility not operated by the FAA or by or under contract to the U.S. military; and an operator as defined in 14 CFR 135.1(c).

Performing (a safety-sensitive function): an employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

Refusal to submit means that a covered employee engages in conduct specified in 49 CFR 40.261.

Safety-sensitive function means a function listed in section II of this appendix.

Violation rate means the number of covered employees (as reported under section IV of this appendix) found during random tests given under this appendix to have an alcohol concentration of 0.04 or greater plus the number of employees who refused a random test required by this appendix, divided by the total reported number of employees in the industry given random alcohol tests under this appendix plus the total reported number of employees in the industry who refuse a random test required by this appendix.

E. Preemption of State and local laws.

1. Except as provided in subparagraph 2 of this paragraph, these regulations preempt any State or local law, rule, regulation, or order to the extent that:

(a) Compliance with both the State or local requirement and this appendix is not possible; or

(b) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this appendix.

2. The alcohol misuse requirements of this title shall not be construed to preempt provisions of State criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

F. Other requirements imposed by employers.

Except as expressly provided in these alcohol misuse requirements, nothing in these requirements shall be construed to affect the authority of employers, or the rights of employees, with respect to the use or possession of alcohol, including any authority and rights with respect to alcohol testing and rehabilitation.

G. Requirement for notice.

Before performing an alcohol test under this appendix, each employer shall notify a covered employee that the alcohol test is required by this appendix. No employer shall falsely represent that a test is administered under this appendix.

II. Covered Employees

Each employee who performs a function listed in this section directly or by contract for an employer as defined in this appendix must be subject to alcohol testing under an FAA-approved alcohol misuse prevention program implemented in accordance with this appendix. The covered safety-sensitive functions are:

1. Flight crewmember duties.
2. Flight attendant duties.
3. Flight instruction duties.
4. Aircraft dispatcher duties.
5. Aircraft maintenance or preventive maintenance duties.
6. Ground security coordinator duties.
7. Aviation screening duties.
8. Air traffic control duties.

III. Tests Required

A. Pre-employment testing

As an employer, you may, but are not required to, conduct pre-employment alcohol testing under this part. If you choose to conduct pre-employment alcohol testing, you must comply with the following requirements:

1. You must conduct a pre-employment alcohol test before the first performance of safety-sensitive functions by every covered employee (whether a new employee or someone who has transferred to a position involving the performance of safety-sensitive functions).
2. You must treat all safety-sensitive employees performing safety-sensitive functions the same for the purpose of pre-employment alcohol testing (i.e., you must not test some covered employees and not others).
3. You must conduct the pre-employment tests after making a contingent offer of employment or transfer, subject to the employee passing the pre-employment alcohol test.
4. You must conduct all pre-employment alcohol tests using the alcohol testing procedures of 49 CFR Part 40.
5. You must not allow a covered employee to begin performing safety-sensitive functions unless the result of the employee's test indicates an alcohol concentration of less than 0.04.

B. Post-accident testing

1. As soon as practicable following an accident, each employer shall test each surviving covered employee for alcohol if that employee's performance of a safety-sensitive function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the employer's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.
2. If a test required by this section is not administered within 2 hours following the accident, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the accident, the employer shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FAA upon request of the Administrator or his or her designee.
3. A covered employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed by the employer to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

C. Random testing

1. Except as provided in paragraphs 2-4 of this section, the minimum annual percentage rate for random alcohol testing will be 25 percent of the covered employees.

2. The Administrator's decision to increase or decrease the minimum annual percentage rate for random alcohol testing is based on the violation rate for the entire industry. All information used for this determination is drawn from alcohol MIS reports required by this appendix. In order to ensure reliability of the data, the Administrator considers the quality and completeness of the reported data, may obtain additional information or reports from employers, and may make appropriate modifications in calculating the industry violation rate. Each year, the Administrator will publish in the Federal Register the minimum annual percentage rate for random alcohol testing of covered employees. The new minimum annual percentage rate for random alcohol testing will be applicable starting January 1 of the calendar year following publication.

3. (a) When the minimum annual percentage rate for random alcohol testing is 25 percent or more, the Administrator may lower this rate to 10 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this appendix for two consecutive calendar years indicate that the violation rate is less than 0.5 percent.

b) When the minimum annual percentage rate for random alcohol testing is 50 percent, the Administrator may lower this rate to 25 percent of all covered employees if the Administrator determines that the data received under the reporting requirements of this appendix for two consecutive calendar years indicate that the violation rate is less than 1.0 percent but equal to or greater than 0.5 percent.

4. (a) When the minimum annual percentage rate for random alcohol testing is 10 percent, and the data received under the reporting requirements of this appendix for that calendar year indicate that the violation rate is equal to or greater than 0.5 percent but less than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 25 percent of all covered employees.

(b) When the minimum annual percentage rate for random alcohol testing is 25 percent or less, and the data received under the reporting requirements of this appendix for that calendar year indicate that the violation rate is equal to or greater than 1.0 percent, the Administrator will increase the minimum annual percentage rate for random alcohol testing to 50 percent of all covered employees.

5. The selection of employees for random alcohol testing shall be made by a scientifically valid method, such as a random-number table or a computer-based random number generator that is matched with employees' Social Security numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each covered employee shall have an equal chance of being tested each time selections are made.

6. The employer shall randomly select a sufficient number of covered employees for testing during each calendar year to equal an annual rate not less than the minimum annual percentage rate for random alcohol testing determined by the Administrator. If the employer conducts random testing through a Consortium/Third-party administrator (C/TPA), the number of employees to be tested may be calculated for each individual employer or may be based on

the total number of covered employees who are subject to random alcohol testing at the same minimum annual percentage rate under this appendix or any DOT alcohol testing rule.

7. Each employer shall ensure that random alcohol tests conducted under this appendix are unannounced and that the dates for administering random tests are spread reasonably throughout the calendar year.

8. Each employer shall require that each covered employee who is notified of selection for random testing proceeds to the testing site immediately; provided, however, that if the employee is performing a safety-sensitive function at the time of the notification, the employer shall instead ensure that the employee ceases to perform the safety-sensitive function and proceeds to the testing site as soon as possible.

9. A covered employee shall only be randomly tested while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

10. If a given covered employee is subject to random alcohol testing under the alcohol testing rules of more than one DOT agency, the employee shall be subject to random alcohol testing at the percentage rate established for the calendar year by the DOT agency regulating more than 50 percent of the employee's functions.

11. If an employer is required to conduct random alcohol testing under the alcohol testing rules of more than one DOT agency, the employer may --

(a) Establish separate pools for random selection, with each pool containing the covered employees who are subject to testing at the same required rate; or

(b) Randomly select such employees for testing at the highest percentage rate established for the calendar year by any DOT agency to which the employer is subject.

D. Reasonable Suspicion Testing

1. An employer shall require a covered employee to submit to an alcohol test when the employer has reasonable suspicion to believe that the employee has violated the alcohol misuse prohibitions in § 65.46a, 121.458, or 135.253 of this chapter.

2. The employer's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

3. Alcohol testing is authorized by this section only if the observations required by paragraph 2 are made during, just preceding, or just after the period of the work day that the covered

employee is required to be in compliance with this rule. An employee may be directed by the employer to undergo reasonable suspicion testing for alcohol only while the employee is performing safety-sensitive functions; just before the employee is to perform safety-sensitive functions; or just after the employee has ceased performing such functions.

4. (a) If a test required by this section is not administered within 2 hours following the determination made under paragraph 2 of this section, the employer shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination made under paragraph 2 of this section, the employer shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(b) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, no covered employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an employer permit the covered employee to perform or continue to perform safety-sensitive functions until:

(1) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(2) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination made under paragraph 2 of this section that there is reasonable suspicion that the employee has violated the alcohol misuse provisions in § 65.46a, 121.458, or 135.253 of this chapter.

(c) No employer shall take any action under this appendix against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an employer with authority independent of this appendix from taking any action otherwise consistent with law.

E. Return to Duty Testing

Each employer shall ensure that before a covered employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited in § 65.46a, § 121.458, or § 135.253 of this chapter, the employee shall undergo a return to duty alcohol test with a result indicating an alcohol concentration of less than 0.02. The test cannot occur until after the SAP has determined that the employee has successfully complied with the prescribed education and/or treatment.

F. Follow-up Testing

1. Each employer shall ensure that the employee who engages in conduct prohibited by § 65.46a, § 121.458, or § 135.253 of this chapter is subject to unannounced follow-up alcohol testing as directed by a SAP.

2. The number and frequency of such testing shall be determined by the employer's SAP, but must consist of at least six tests in the first 12 months following the employee's return to duty.

3. The employer may direct the employee to undergo testing for drugs, if the SAP determines that drug testing is necessary for the particular employee. Any such drug testing shall be conducted in accordance with the provisions of 49 CFR part 40.

4. Follow-up testing shall not exceed 60 months after the date the individual begins to perform or returns to the performance of a safety-sensitive function. The SAP may terminate the requirement for follow-up testing at any time after the first six tests have been conducted, if the SAP determines that such testing is no longer necessary.

5. A covered employee shall be tested for alcohol under this paragraph only while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

G. Retesting of Covered Employees With an Alcohol Concentration of 0.02 or Greater but Less Than 0.04

Each employer shall retest a covered employee to ensure compliance with the provisions of section V, paragraph F of this appendix, if the employer chooses to permit the employee to perform a safety-sensitive function within 8 hours following the administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

IV. Handling of Test Results, Record Retention, and Confidentiality

A. Retention of Records

1. *General Requirement.* In addition to the records required to be maintained under 49 CFR part 40, employers must maintain records required by this appendix in a secure location with controlled access.

2. Period of retention.

(a) Five years.

(1) Copies of any annual reports submitted to the FAA under this appendix for a minimum of 5 years.

(2) Records of notifications to the Federal Air Surgeon of violations of the alcohol misuse prohibitions in this chapter by covered employees who hold medical certificates issued under part 67 of this chapter.

(3) Documents presented by a covered employee to dispute the result of an alcohol test administered under this appendix.

(4) Records related to other violations of § 65.46a, § 121.458, or § 135.253 of this chapter.

(b) *Two years.* Records related to the testing process and training required under this appendix.

(1) Documents related to the random selection process.

(2) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(3) Documents generated in connection with decisions on post-accident tests.

(4) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(5) Materials on alcohol misuse awareness, including a copy of the employer's policy on alcohol misuse.

(6) Documentation of compliance with the requirements of section VI, paragraph A of this appendix.

(7) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(8) Certification that any training conducted under this appendix complies with the requirements for such training.

B. Reporting of Results in a Management Information System

1. Annual reports summarizing the results of alcohol misuse prevention programs shall be submitted to the FAA in the form and manner prescribed by the Administrator by March 15 of each year covering the previous calendar year (January 1 through December 31) in accordance with the provisions below.

(a) Each part 121 certificate holder shall submit an annual report each year.

(b) Each entity conducting an alcohol misuse prevention program under the provisions of this appendix, other than a part 121 certificate holder, that has 50 or more covered employees on January 1 of any calendar year shall submit an annual report to the FAA for that calendar year.

(c) The Administrator reserves the right to require employers not otherwise required to submit annual reports to prepare and submit such reports to the FAA. Employers that will be required to submit annual reports under this provision will be notified in writing by the FAA.

2. Each employer that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than one DOT agency. The identification will be by the total number and category of covered function. Prior to conducting any alcohol test on a covered employee subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.
3. Each employer shall ensure the accuracy and timeliness of each report submitted.
4. Each report shall be submitted in the form and manner prescribed by the Administrator.
5. Each report shall be signed by the employer's alcohol misuse prevention program manager or other designated representative.
6. Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of § 65.46a, 121.458, or 135.253 of this chapter shall include the following informational elements:
 - (a) Number of covered employees by employee category.
 - (b) Number of covered employees in each category subject to alcohol testing under the alcohol misuse rule of another DOT agency, identified by each agency.
 - (c)(1) Number of screening tests by type of test and employee category.
 - (2) Number of confirmation tests, by type of test and employee category.
 - (d) Number of confirmation alcohol tests indicating an alcohol concentration of 0.02 or greater but less than 0.04 by type of test and employee category.
 - (e) Number of confirmation alcohol tests indicating an alcohol concentration of 0.04 or greater, by type of test and employee category.
 - (f) Number of persons denied a position as a covered employee following a pre-employment alcohol test indicating an alcohol concentration of 0.04 or greater.
 - (g) Number of covered employees with a confirmation alcohol test indicating an alcohol concentration of 0.04 or greater who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in section V, paragraph E, and section VI, paragraph C of this appendix).
 - (h) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test result and an alcohol test result indicating an alcohol concentration of 0.04 or greater.

(i) Number of covered employees who were found to have violated other alcohol misuse provisions of § 65.46a, 121.458, or 135.253 of this chapter, and the action taken in response to the violation.

(j) Number of covered employees who refused to submit to an alcohol test required under this appendix, the number of such refusals that were for random tests, and the action taken in response to each refusal.

(k) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

7. Each report with no screening test results of 0.02 or greater or violations of the alcohol misuse provisions of § 65.46a, 121.458, or 135.253 of this chapter shall include the following informational elements. (This report may only be submitted if the program results meet these criteria.)

(a) Number of covered employees by employee category.

(b) Number of covered employees in each category subject to alcohol testing under the alcohol misuse rule of another DOT agency, identified by each agency.

(c) Number of screening tests by type of test and employee category.

(d) Number of covered employees who engaged in alcohol misuse who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in section V, paragraph E, and section VI, paragraph C of this appendix).

(e) Number of covered employees who refused to submit to an alcohol test required under this appendix, and the action taken in response to each refusal.

(f) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(8) Certification that any training conducted under this appendix complies with the requirements for such training.

C. Access to Records and Facilities

1. Except as required by law or expressly authorized or required in this appendix, no employer shall release covered employee information that is contained in records required to be maintained under this appendix.

2. A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests in accordance with 49 CFR part 40. The employer shall promptly provide the records

requested by the employee. Access to an employee's records shall not be contingent upon payment for records other than those specifically requested.

3. Each employer shall permit access to all facilities utilized in complying with the requirements of this appendix to the Secretary of Transportation or any DOT agency with regulatory authority over the employer or any of its covered employees.

V. Consequences for Employees Engaging in Alcohol-Related Conduct

A. Removal From Safety-sensitive Function

1. Except as provided in section VI of this appendix, no covered employee shall perform safety-sensitive functions if the employee has engaged in conduct prohibited by § 65.46a, 121.458, or 135.253 of this chapter or an alcohol misuse rule of another DOT agency.

2. No employer shall permit any covered employee to perform safety-sensitive functions if the employer has determined that the employee has violated this paragraph.

B. Permanent Disqualification From Service

An employee who violates § 65.46a(c), 121.458(c), or 135.253(c) of this chapter, or who engages in alcohol use that violates another alcohol misuse provision of § 65.46a, 121.458, or 135.253 of this chapter and had previously engaged in alcohol use that violated the provisions of § 65.46a, 121.458, or 135.253 of this chapter after becoming subject to such prohibitions is permanently precluded from performing for an employer the safety-sensitive duties the employee performed before such violation.

C. Notice to the Federal Air Surgeon

1. An employer who determines that a covered employee who holds an airman medical certificate issued under part 67 of this chapter has engaged in alcohol use that violated the alcohol misuse provisions of § 65.46a, 121.458, or 135.253 of this chapter shall notify the Federal Air Surgeon within 2 working days.

2. Each such employer shall forward to the Federal Air Surgeon a copy of the report of any evaluation performed under the provisions of section VI of this appendix within 2 working days of the employer's receipt of the report.

3. All documents shall be sent to the Federal Air Surgeon, Office of Aviation Medicine, Federal Aviation Administration, Attn: Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

4. No covered employee who is required to hold a medical certificate under part 67 of this chapter to perform a safety-sensitive duty shall perform that duty following a violation of this appendix until and unless the Federal Air Surgeon has recommended that the employee be permitted to perform such duties.

5. Once the Federal Air Surgeon has recommended under paragraph C.4. of this section that the employee be permitted to perform safety-sensitive duties, the employer cannot permit the employee to perform those safety-sensitive duties until the employer has ensured that the employee meets the return to duty requirements in accordance with 49 CFR part 40.

D. Notice of Refusals

1. Except as provided in subparagraph 2 of this paragraph D, each employer shall notify the FAA within 5 working days of any covered employee who holds a certificate issued under 14 CFR part 61, part 63, or part 65 who has refused to submit to an alcohol test required under this appendix. Notifications should be sent to: Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591.

2. An employer is not required to notify the above office of refusals to submit to pre-employment alcohol tests or refusals to submit to return to duty tests.

E. Required Evaluation and Testing

No covered employee who has engaged in conduct prohibited by § 65.46a, 121.458, or 135.253 of this chapter shall perform safety-sensitive functions unless the employee has met the requirements of section VI, paragraph C of this appendix. No employer shall permit a covered employee who has engaged in such conduct to perform safety-sensitive functions unless the employee has met the requirements of section VI, paragraph C of this appendix.

F. Other Alcohol-Related Conduct

1. No covered employee tested under the provisions of section III of this appendix who is found to have an alcohol concentration of 0.02 or greater but less than 0.04 shall perform or continue to perform safety-sensitive functions for an employer, nor shall an employer permit the employee to perform or continue to perform safety-sensitive functions, until:

(a) The employee's alcohol concentration measures less than 0.02; or

(b) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following administration of the test.

2. Except as provided in subparagraph 1 of this paragraph, no employer shall take any action under this rule against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an employer with authority independent of this rule from taking any action otherwise consistent with law.

VI. Alcohol Misuse Information, Training, and Substance Abuse Professional

A. Employer Obligation to Promulgate a Policy on the Misuse of Alcohol

1. *General requirements.* Each employer shall provide educational materials that explain these alcohol misuse requirements and the employer's policies and procedures with respect to meeting those requirements.

(a) The employer shall ensure that a copy of these materials is distributed to each covered employee prior to the start of alcohol testing under the employer's FAA-mandated alcohol misuse prevention program and to each person subsequently hired for or transferred to a covered position.

(b) Each employer shall provide written notice to representatives of employee organizations of the availability of this information.

2. *Required content.* The materials to be made available to employees shall include detailed discussion of at least the following:

(a) The identity of the person designated by the employer to answer employee questions about the materials.

(b) The categories of employees who are subject to the provisions of these alcohol misuse requirements.

(c) Sufficient information about the safety-sensitive functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with these alcohol misuse requirements.

(d) Specific information concerning employee conduct that is prohibited by this chapter.

(e) The circumstances under which a covered employee will be tested for alcohol under this appendix.

(f) The procedures that will be used to test for the presence of alcohol, protect the employee and the integrity of the breath testing process, safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(g) The requirement that a covered employee submit to alcohol tests administered in accordance with this appendix.

(h) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(i) The consequences for covered employees found to have violated the prohibitions in this chapter, including the requirement that the employee be removed immediately from performing safety-sensitive functions, and the procedures under section VI of this appendix.

(j) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(k) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem; and available methods of evaluating and resolving problems associated with the misuse of alcohol; and intervening when an alcohol problem is suspected, including confrontation, referral to any available employee assistance program, and/or referral to management.

(l) *Optional provisions.* The materials supplied to covered employees may also include information on additional employer policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the employer's authority independent of this appendix. Any such additional policies or consequences must be clearly and obviously described as being based on independent authority.

B. Training for Supervisors

Each employer shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under section II of this appendix receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

C. Substance Abuse Professional (SAP) Duties

The SAP must perform the functions set forth in 49 CFR part 40, Subpart O, and this appendix.

VII. Employer's Alcohol Misuse Prevention Program

A. Schedule for Submission of Certification Statements and Implementation

1. Each employer shall submit an alcohol misuse prevention program (AMPP) certification statement as prescribed in paragraph B of section VII of this appendix, in duplicate, to the Federal Aviation Administration, Office of Aviation Medicine, Drug Abatement Division (AAM-800), 800 Independence Avenue, SW., Washington, DC 20591, in accordance with the schedule below.

(a) Each employer that holds a part 121 certificate, each employer that holds a part 135 certificate and directly employs more than 50 covered employees, and each air traffic control facility affected by this rule shall submit a certification statement to the FAA by July 1, 1994. Each employer must implement an AMPP meeting the requirements of this appendix on January 1, 1995. Contractor employees to these employers must be subject to an AMPP meeting the requirements of this appendix by July 1, 1995.

(b) Each employer that holds a part 135 certificate and directly employs from 11 to 50 covered employees shall submit a certification statement to the FAA by January 1, 1995. Each employer must implement an AMPP meeting the requirements of this appendix on July 1, 1995. Contractor

employees to these employers must be subject to an AMPP meeting the requirements of this appendix by January 1, 1996.

(c) Each employer that holds a part 135 certificate and directly employs ten or fewer covered employees, and each operator as defined in 14 CFR 135.1(c) shall submit a certification statement to the FAA by July 1, 1995. Each employer must implement an AMPP meeting the requirements of this appendix on January 1, 1996. Contractor employees to these employers must be subject to an AMPP meeting the requirements of this appendix by July 1, 1996.

2. A company providing covered employees by contract to employers may be authorized by the FAA to establish an AMPP under the auspices of this appendix by submitting a certification statement meeting the requirements of paragraph B of section VII of this appendix directly to the FAA. Each contractor company that establishes an AMPP shall implement its AMPP in accordance with the provisions of this appendix.

(a) The FAA may revoke its authorization in the case of any contractor company that fails to properly implement its AMPP.

(b) No employer shall use a contractor company's employee who is not subject to the employer's AMPP unless the employer has first determined that the employee is subject to the contractor company's FAA-mandated AMPP.

3. Any person who applies for a certificate under the provisions of parts 121 or 135 of this chapter after the effective date of the final rule shall submit an alcohol misuse prevention program (AMPP) certification statement to the FAA prior to beginning operations pursuant to the certificate. The AMPP shall be implemented concurrently with beginning such operations or on the date specified in paragraph A.1. of this section, whichever is later. Contractor employees to a new certificate holder must be subject to an FAA-mandated AMPP within 180 days of the implementation of the employer's AMPP.

4. Any person who intends to begin air traffic control operations as an employer as defined in 14 CFR 65.46(a)(2) (air traffic control facilities not operated by the FAA or by or under contract to the U.S. military) after March 18, 1994 shall, not later than 60 days prior to the proposed initiation of such operations, submit an alcohol misuse prevention program certification statement to the FAA. The AMPP shall be implemented concurrently with the inception of operations or on the date specified in paragraph A.1 of this section, whichever is later. Contractor employees to a new air traffic control facility must be subject to an FAA-approved program within 180 days of the implementation of the facility's program.

5. Any person who intends to begin sightseeing operations as an operator under 14 CFR 135.1(c) after March 18, 1994 shall, not later than 60 days prior to the proposed initiation of such operations, submit an alcohol misuse prevention program (AMPP) certification statement to the FAA. The AMPP shall be implemented concurrently with the inception of operations or on the date specified in paragraph A.1 of this section, whichever is later. Contractor employees to a new operator must be subject to an FAA-mandated AMPP within 180 days of the implementation of the employer's AMPP.

6. The duplicate certification statement shall be annotated indicating receipt by the FAA and returned to the employer or contractor company.

7. Each employer, and each contractor company that submits a certification statement directly to the FAA, shall notify the FAA of any proposed change in status, (e.g., join another carrier's program) prior to the effective date of such change. The employer or contractor company must ensure that it is continuously covered by an FAA-mandated alcohol misuse prevention program.

B. Required Content of AMPP Certification Statements

1. Each AMPP certification statement submitted by an employer or a contractor company shall provide the following information:

(a) The name, address, and telephone number of the employer/contractor company and for the employer/contractor company AMPP manager;

(b) FAA operating certificate number (if applicable);

(c) The date on which the employer or contractor company will implement its AMPP;

(d) A statement signed by an authorized representative of the employer or contractor company certifying an understanding of and agreement to comply with the provisions of the FAA's alcohol misuse prevention regulations.

VIII. Employees Located Outside the U.S.

A. No covered employee shall be tested for alcohol misuse while located outside the territory of the United States.

1. Each covered employee who is assigned to perform safety-sensitive functions solely outside the territory of the United States shall be removed from the random testing pool upon the inception of such assignment.

2. Each covered employee who is removed from the random testing pool under this paragraph shall be returned to the random testing pool when the employee resumes the performance of safety-sensitive functions wholly or partially within the territory of the United States.

B. The provisions of this appendix shall not apply to any person who performs a safety-sensitive function by contract for an employer outside the territory of the United States.

[Amdt. 121-237, 59 FR 7390, Feb. 15, 1994, as amended at 59 FR 53086, Oct. 21, 1994; 59 FR 62238, 62239, Dec. 2, 1994; 59 FR 66672, Dec. 28, 1994; 61 FR 37224, July 17, 1996; 65 FR 18887, Apr. 10, 2000; 66 FR 41967, Aug. 9, 2001]

Effective Date Note:

By Amdt. 121-237, 60 FR 24766, May 10, 1995, part 121, was amended by suspending appendix J, sec. III, subsection A ("Pre-employment"), effective May 10, 1995.